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Response under 37 CFR 1.116
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RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641

DAC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL**

This is a continuation of Serial no. 07/ 760,970

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

RECEIVED

APR 29 2004

OFFICE OF PETITIONS

Office of the Clerk
Board OF PATENT Appeals
c/o The Commissioner for Patents
Alexandria, VA 22313-1450

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GROUP 3600

April 21, 2004

**PETITION to the COMMISSIONER
pursuant to 37 C.F.R. 1.181**

1. This petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct the situation with respect to the recent unsigned OFFICE Communication [Exhibit "A" attached]. Pursuant to 37 C.F.R. 1.181, there is no fee.

The Appellant has received said notification regarding the Appeal Brief dated March 31, 2004. This Petition will demonstrate that all matters cited by the Office have already been addressed and corrected in the now-submitted revised Appeal Brief. This Petition will also demonstrate that said matters were already addressed in the Appellant's previously submitted "Notice of Compliance". This Petition also addresses all inaccurate statements in the Office notification.

2. This Petition is reasonable, based upon the reasons stated below and confirmed by the facts as discussed in the two (2) Declarations supporting this Petition. In the discussion below, reference is made to the Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated April 21, 2004. It will be demonstrated that this Petition is reasonable because of the Office's failure to be accurate and follow a uniform standard of review. In the discussion below, reference is made to the Declaration of Gayle Verner (hereinafter called the "Verner Declaration") dated April 21, 2004. It will be demonstrated that this Petition is reasonable.

The Office's First False Statement

3. The Office's Communication inaccurately states,
"1. Claims 1-10, 12-19, 21 and 22 have been rejected. Applicant states in the Grouping of Claims Section that the "appealed claims do not stand or fall together." However, there is still' no discussion in the Arguments section of why EACH claim is considered separately patentable. For example:"

THE TRUTH - The Appellant Responded

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific reason why EACH independent claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. The Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"10. ... there is discussion in the Arguments section it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition it was discussed on page 21.

Second Appellant respectfully disputes this because there is discussion in the Arguments section of why EACH claim is considered separately patentable.

Third, as Appellant stated,

"Claim 1 distinguishes and limits the invention, in a process for producing a product using a material which is electrochemically loaded with an isotopic fuel, to a method of controlling the loading which includes in combination, loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material,

creating thereby a catastrophic diffusion flux of said isotopic fuel within said material, providing a diffusion barrier to said diffusion flux of said isotopic fuel within said material, and thereby producing said product."

Claim 4 distinguishes and limits the invention, in a process using an isotopic fuel loaded into a material, to a two-stage method for controlling the loading which includes in combination loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 13 distinguishes and further limits the invention to an apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination means to load said isotopic fuel into said material, means to produce a change in the quantity of said isotopic fuel within said material, means to produce a catastrophic diffusion flux of said isotopic fuel within said material, means thereby to produce said product."

Fourth, judiciary economy is important, and Appellant did not want to repeat each portion discussed on page 21 an additional four times. However, to please the Examiner and the Office, the Appellant has corrected this, as requested."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did he discuss Applicant's arguments. Nor did he rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"10. ... there is discussion in the Arguments section it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition is was discussed on page 21."

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than his desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review. The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

Fifth, there is no basis for the examiner's demand. Historically, this case and docket is such that the present above-entitled invention is a continuation of the previous application, which was before the Board of patent appeal and before the federal court. In that docket (S.N. ' 970) of which the present above entitled application is a continuation, neither the Board nor court had any problem. Instead the Examiner has created bogus issues and fabricated new demands to obstruct the appellant from presenting his appeal brief to the Board of patent Appeal.

Sixth, the Examiner's new demands have no basis in authority or law or precedent on a general basis. The appellant has previously responded, and it is the examiner who has failed to respond in his unsigned communication which ignores the appellants submitted (and received) notification of compliance and new appeal brief (in triplicate).

Seventh, the Examiners new demands are inconsistent with the normal standards of review. The standard of review in this Case includes the fact that the examiner suddenly demands that the appellant write separate responses for each of the dependent claims whereas the law requires and the standards of review consists of appellants who deal with the independent claims. This is demonstrated by precedent.

Eighth, the examiners new demands are unnecessary, and clearly have been made only to obstruct justice and deny the Board access to an Appeal.

The Office's Second False Statement

4. The Office's Communication inaccurately states,

"a. As to the rejections under 35 U.S.C. 112, 1st paragraph, Applicant provides arguments only for claims 1, 4 and 13. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 21 of the Appeal Brief)."

THE TRUTH - The Appellant Responded

The Examiner is incorrect for several reasons. First, the Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong ... it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph)."
["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"(This) is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph)"

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

Second, there is no basis for the examiner's demand. Historically, this case and docket is such that the present above-entitled invention is a continuation of the previous application, which was before the Board of patent appeal and before the federal court. In that docket (S.N. ' 970) of which the present above entitled application is a continuation, neither the Board nor court had any problem. Instead the Examiner has created bogus issues and fabricated new demands to obstruct the appellant from presenting his appeal brief to the Board of patent Appeal.

Third, the Examiner's new demands have no basis in authority or law or precedent on a general basis. The appellant has previously responded, and it is the examiner who has failed to respond in his unsigned communication which ignores the appellants submitted (and received) notification of compliance and new appeal brief's.

Fourth the examiners new demands are inconsistent with the normal standards of review. The standard of review in this Case includes the fact that the examiner suddenly demands that the appellant write out separate responses for each of the dependent claims whereas the law requires and the standards of review consist of, appellants having only to deal with the independent claims.

Fifth, the Examiner castigates the Appellant for repeating things, but is attempting to trick to Appellant into stating almost the same thing over and over.

Sixth, the examiners new demands are unnecessary and made only to obstruct justice. The examiner continues to be unreasonable, inaccurate, and apparently not on the same page as either the security of United States or the empowerment of United States citizens secondary to article 1 section 8.

The Office's Third False Statement

5. The Office's Communication inaccurately states,

"b. As to the rejections under 35 U.S.C. 112, 2nd paragraph, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 92 of the Appeal Brief)."

THE TRUTH - The Appellant Responded

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong ... it is explicitly discussed ... on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph)"

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Office is wrong ... it is explicitly discussed ... on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph)"

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

The Office's Fourth False Statement

6. The Office's Communication inaccurately states,

"c. As to the rejections under 35 U.S.C. 102, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 100 of the Appeal Brief)"

THE TRUTH - The Appellant responded

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong ... it is explicitly discussed ... on page 99 of the Argument section for 35 U.S.C. 102"

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Office is wrong ... it is explicitly discussed ... on page 99 of the Argument section for 35 U.S.C. 102"

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

The Office's Fifth False Statement

7. The Office's Communication inaccurately states,

"d. As to the rejections under 35 U.S.C. 101, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 131 of the Appeal Brief)."

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong it is explicitly discussed on page 127 of the Argument section for 35 U.S.C. 101."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people.

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Office is wrong it is explicitly discussed on page 127 of the Argument section for 35 U.S.C. 101."

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

The Office's Sixth False Statement

8. The Office's Communication inaccurately states,

"2. The Grouping of Claims section is improper because it includes arguments as to why claims 1, 4 and 13 distinguish and limit the invention. As stated in the 12/3/03 Office Action, these arguments should be in the Arguments section. See MPEP 1206, "Appeal Brief", for guidance on the content for this section."

THE TRUTH - The Appellant Responded

The Appellant has followed and the arguments are in the Arguments section. This was discussed in the previous (ignored) Notice to the Examiner. The Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"10. ... there is discussion in the Arguments section it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition it was discussed on page 21."

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner.

The Office's Seventh False Statement

9. The Office's Communication inaccurately states,

"3. Contrary to the allegation on page 9 of "Notice of Compliance by Appellant," applicant has not corrected the error cited in Section f, item d) of the 12/30/03 Office Action (see item 75, page 93 of the Appeal Brief).

"The claims referred to by the Applicant in said item 75 are still incorrect because they are not the claims rejected by the Examiner in the 3/20/03 Final Office Action. Therefore, the arguments presented by the Applicant in this section of the Appeal Brief are non-responsive to the claim rejections because they address the wrong claims."

THE TRUTH - The Appellant Responded

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. The Appellant in careful detail demonstrated that the claims were correctly identified. The Appeal Brief says: "73..... all Claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 " below a heading of "**ARGUMENT REGARDING 35 USC §112 SECOND PARAGRAPH**". Therefore, the question is "Were claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph?". Exhibit "B" was presented to show the Examiner that he previously wrote that "claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph" in his rejection on page 27. Therefore, as the Examiner knows, in fact, the claims were stated correctly AND that the Appellant responded, but the Examiner did not. Therefore, the Appellant complied and was responsive.

The Office's Eighth False Statement

10. The Office's Communication states,

"4. Contrary to the allegation on page 10 of "Notice of Compliance by Appellant," applicant has not corrected Appendix A. Claim 19, as recited, still does not include the term "active" before "quantity"."

THE TRUTH - The Appellant Responded

The Examiner is again directed to the record.

In Applicant's October 22, 2002 missive to the Examiner (before Final), on pages 10 and 100 the deletion of the word "active" without prejudice was made and noted. This is shown on pages 100 [Exhibit "B"] and shown is it was discussed on page 10, among others, in response to the Examiner's comments and requests.

Once again, it appears that the Examiner wants to be able to attack the Applicant (now Appellant), ignore the record, ignore the science, and hope the Office will condone continued obstruction of justice. Exhibit "B" demonstrates that the word active in claim 19 was deleted and the Examiner is without foundation, as he has been without response to Applicant's comments (*vide supra, vide infra*).

The Office's Ninth False Statement

11. The Office's Communication purports,

"5. The purpose of Appendix B is still unclear, e.g., the ZeraEpoint letter."

THE TRUTH - The Appellant Responded

Once again, the Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"17. The Examiner states,

"The purpose of Appendix B is unclear. Applicant should either properly relate this Appendix to his arguments or delete it."

THE TRUTH - Appendix B Was Quoted In The Text In Two Place

Appellant thanks the Examiner for this careful detail, but the Appellant notes that Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. Perhaps the Examiner missed this, and therefore, the Appellant has corrected this for the Examiner."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. May the Court and Board note that once again, the Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people.

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. "

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response.

The Office's Tenth False Statement

12. The Office's Communication inaccurately states,

"Since the above deficiencies have been listed in the 12/30/03 Office Action, Applicant's failure to correct them is no longer considered inadvertent."

THE TRUTH - The Appellant Responded

This statement by the Examiner is disingenuous. The above deficiencies were not listed in the 12/30/03 Office Action. Furthermore, any and all purported deficiencies made by the Examiner in the previous communication were addressed and corrected. In fact, the Appellant was totally compliant before, and is totally compliant now (as will be discussed below). Attention of the Court and Board is directed to the simple fact that all matters were both resolved and discussed by the Appellant. Unfortunately, said previous response by the Appellant was once again simply ignored by the Examiner, leading to the disingenuous sentence cited above.

For example, first, the Office's previous notification stated, "*a. The statement of the Status of Claims is inconsistent with Appendix A (Claims Involved in the Appeal). Claims 11 and 20 are not listed in the Status Of Claims but they are listed in Appendix A.*" Appellant corrected this misprint in Appendix A. **Therefore, the Appellant complied and was responsive.**

Second, the Office's previous notification stated, "*b. The statement of Status of Amendments is confusing because it appears to refer to the original claim 5, instead of an amended claim 5*". Appellant disputed the Examiner that this is confusing. Nonetheless, Appellant complied and corrected this by adding the word "amended" exactly where the Examiner demanded. **Therefore, the Appellant complied and was responsive.**

Third, the Office's previous notification stated, "*c. The Summary of Invention is improper because it includes subject matter not found in the disclosure (e.g. see page 4, 2nd paragraph which is not recited in the Abstract).*" The Examiner was mistaken because these lines are in the original disclosure of the above-entitled application on page 3, lines 1 through 4. Nonetheless to comply with the Examiner, the offending paragraph is now deleted. **Therefore, the Appellant complied and was responsive.**

Fourth, the Office's previous notification stated, "*d. The recitation and scope of Issues is improper because it does not conform to MPEP 1206. For example, applicant does not specify the basis of the alleged unpatentability of the claims. An example of a proper way of phrasing an issue is as follows: 'Whether claims 1-20 are unpatentable under 35 U.S.C. 112, first paragraph, based on a nonenabling disclosure.'*" The Examiner was wrong for eight (8) reasons, listed and discussed in detail (but ignored by the Examiner). In addition, the Appellant conformed with the Examiner's suggestions and rewrote the Issues. **Therefore, the Appellant complied and was responsive.**

Fifth, the Office's previous notification stated, "*Other examples of impropriety include: a) associating operability of the claimed invention with 35 U.S.C. 112 1st and 2nd paragraphs issues*". The Examiner was wrong for nine reasons, listed and discussed in detail (but ignored by the Examiner). In addition, there is no mention of operability of the claimed invention in the argument paragraphs of the 35 U.S.C. 112 2nd paragraphs issues. Appellant respectfully disputed this because utility and USC 101 are not discussed on page 22 of the Appeal Brief, except through enablement. **Therefore, the Appellant complied and was responsive.**

Sixth, The Office's previous notification stated, "*b) improperly including terms not relevant to the grounds of rejection used by the examiner, e.g., 1.192q6)(v)' statements on 'disingenuous claim by the Office' etc..*" The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). So as to fully comply with the Examiner, the Appellant corrected this and removed the Issues which offended the Office about the "United States Constitution", despite Appellant's civil rights thus clearly violated. **Therefore, the Appellant complied and was responsive.**

Seventh, the Office's previous notification stated, "*e. The statement on Grouping of Claims is improper because it includes arguments as to why claims 1, 4 and 5 (sic) distinguish and limit the invention. These arguments should be in the Argument section*". The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). The independent claims discussed in the Grouping of Claims is not "claims 1, 4 and 5" as the Examiner purports, but Claims 1, 4 and 13. As Appellant stated, as follows in the Appeal Brief,

"Claim 1 distinguishes and limits the invention, in a process for producing a product using a material which is electrochemically loaded with an isotopic fuel, to a method of controlling the loading which includes in combination, loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said

material, providing a diffusion barrier to said diffusion flux of said isotopic fuel within said material, and thereby producing said product.

Claim 4 distinguishes and limits the invention, in a process using an isotopic fuel loaded into a material, to a two-stage method for controlling the loading which includes in combination loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 13 distinguishes and further limits the invention to an apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination means to load said isotopic fuel into said material, means to produce a change in the quantity of said isotopic fuel within said material, means to produce a catastrophic diffusion flux of said isotopic fuel within said material, means thereby to produce said product."

Therefore, the Appellant complied and was responsive.

Eighth, the Office's previous notification stated, "The Grouping of Claims section states that *"the appealed claims do not stand or fall together."* However there is no discussion in the Arguments section as to why EACH claim is considered separately patentable." The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). Despite the disingenuous statement of the Examiner, it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition it was discussed on page 21. In addition, to please the Examiner and the Office, the Appellant corrected this, as requested, yet again. **Therefore, the Appellant complied and was responsive.** Why does the Examiner NEVER have to respond?

Ninth, the Office's previous notification stated, "*f. Applicant's contentions in the Arguments section are improper. Examples of impropriety include: a) issues of operability and utility are improperly associated in arguments regarding the 35 U.S.C. 112, 1st paragraph rejection (see page 22 of the Brief)*". The Examiner was wrong for seven reasons, listed and discussed in detail (but ignored by the Examiner). First, utility and USC 101 are not discussed on page 22 of the Appeal Brief. Second, for ten years the Office has cited "operability" pursuant to 35 U.S.C. 112, first paragraph issues. All of a sudden, the Office's previous arguments that were reasonably consistent over more than a decade in this matter, apparently were changed suddenly without any clear substantive explanation, authority, exhibit, or basis for the paroxysmal change - despite repeated requests. **Therefore, the Appellant complied and was responsive.**

Tenth, the Office's previous notification stated, "*c) claims rejected under 35 U.S.C. 112, 2nd paragraph are not correctly identified (e.g., see item 75, page 92)*". The Appellant in careful detail demonstrated that the claims were correctly identified. The Appeal Brief says: "73..... all Claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 " below a heading of **"ARGUMENT REGARDING 35 USC §112 SECOND PARAGRAPH"**. Therefore, the questions is "Were claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph?". Exhibit "B" was presented to show the Examiner the he previously wrote that "claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph" in his rejection on page 27. Therefore, as the Examiner knows, in fact, the claims were stated correctly AND that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Eleventh, the Office's previous notification stated, "*b) arguments regarding 35 U.S.C. 112, 2nd paragraph, improperly discusses 35 U.S.C. 102(b) rejection of claims (e.g. see page: 92)*". The Appellant in careful detail demonstrated that the Examiner was incorrect. The Board and Examiner were directed to the fact that the record demonstrates that the Appellant had appealed on the Issue of "definiteness". Therefore, the Appellant is entitled to bring up an argument regarding the rejection of Claims 1-10, 12-19, 21 and 22 under 35 U.S.C. 112 second paragraph which states, -- as Appellant notes to the Board -- "... there has to have been definiteness with respect to the present invention because it is a Continuation and because the Examiner could not have made the previous rejections under 35 U.S.C. 102 had the invention truly been without definiteness." The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Twelfth, the Office's previous notification stated, "*d) claims rejected as being anticipated by Kinsella under 35 U.S.C. 102(b) are not correctly identified (e.g., see item 95, page 110).*" The Appellant has corrected this and noted,

Appellant suggests that the Examiner has said this "tongue-in-cheek" and to put the Appellant through another "hoop" because although the Applicant did make a misprint here and used "Claims 1, 2, 4, 5, 7, 10, 13, 15 and 16 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Kinsella (U.S. 3,682, 806)" instead of "Claims 1, 2, 4, 5, 7, 10, 13, 15 and 16 and 21 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Kinsella (U.S. 3,682, 806)". However, as the Examiner knows, in fact, in the important summary page on 141 of the Appeal Brief, the Appellant stated this correctly. This demand of the Examiner is inconsistent with the U.S. Supreme Court, which has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Thirteenth, the Office's previous notification stated, "*claims that have not been rejected, such as claims 11 and 20, are improperly included in the list.*" Appellant corrected this misprint. **Therefore, the Appellant complied and was responsive.**

Fourteen, the Office's previous notification stated, "*The purpose of Appendix B is unclear. Applicant should either properly relate this Appendix to his arguments or delete it.*" Appellant noted that Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. The Examiner missed this. In addition, the Appellant corrected this for the Examiner. The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Here then are fourteen (14) ways Appellant responded and/or complied. And to these 14 changes and/or responses, the Examiner has done nothing except to disingenuously pretend that there has been no response. Instead of allowing the Board in its own wisdom to resolve the important matter involving the Applicant's invention and civil rights, and now involving US security, the Examiner --fully aware that the Appellant responded-- with tongue deep-in-cheek pretends that Appellant did not. However, the record, the previous Notification, and this present Response with the accompanying Declarations, do palpably affirm otherwise. **The Appellant complied and was responsive.**

Given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, and authority which allows the Examiner to dismiss the Appellant's previous fourteen responses without a single citation, or substantive coherent response.

SUMMARY

13. Appellant has already fixed the errors which the Office has noted previously. The Office's communication dated March 31, 2004 [Exhibit "A"], appears to itself have at least eleven serious errors. Said error results because the Office has ignored the Applicant's communications of October 22, 2002 [Exhibit "B"], and the Notice and Appeal submitted to the Office (and received) January 4, 2004.


14. Appellant notes that the U.S. Supreme Court, which has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

15. The Office's communication dated March 31, 2004 (Exhibit "A"), which has at least eleven serious errors must now be examined in the light of, previously, forty three (43) errors in other recent Office Communications used by the Examiner to delay both justice and delivery of Appeal Briefs to the Board. Considering only the eleven errors and misguided demands here, if there was a fifty percent likelihood of each error (that is, if it were made innocently), then with the forty three (43) previous cumulative errors by the Examiner in the last several months since the remand from the Board reveal that there is now less than one chance in a billion billion likelihood [1 in $\sim 1.8 \times 10^{16}$] that the Examiner is innocent regarding these errors.

The Appellant notes that all matters purported by the Office have been addressed totally by Appellant, and addressed in Responses.

WHEREFORE for the above reasons, the Applicant (now Appellant) respectfully requests a reversal, and a substantive response, and then with transfer of the Exhibits and Appeals Briefs to the Board for justice.

Respectfully submitted,



Mitchell R. Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

Certificate Of Mailing [37 CFR 1.8(a)]


April 21, 2004

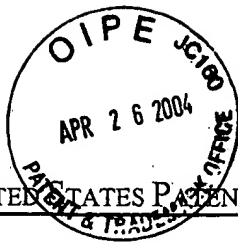
To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to
"Office of the Clerk
Board Of Patent Appeals
c/o The Commissioner for Patents
Alexandria, VA 22313-1450" on the date below.

Thank you.

Sincerely,
April 21, 2004


M.R. Swartz



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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Alexandria, Virginia 22313-1450
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/750,765 | 12/28/2000 | Mitchell R. Swartz | | 8044 |

7590 03/31/2004

Mitchell R. Swartz, ScD, EE, MD
16 Pembroke Road
Weston, MA 02493

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/31/2004

EXHIBIT "A"

Please find below and/or attached an Office communication concerning this application or proceeding.



1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL

This is a continuation of Serial no. 07/ 760,970

Filed: 09/17/1991

PAPER: 13

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

EXHIBIT "B"

October 22, 2002

**Applicant's Response To
The Communication Of 7/22/02**

To Whom it Does Concern:

AMENDMENTS OF CLAIMS AND SPECIFICATION

In response to the Office communication dated 7/22/02 (cover as Exhibit A, attached), please amend the above-identified application as follows:

In The Specification

In response to the Office action of 7/22/02, please amend the above-identified application as follows, in response to, and to fully and completely comply with, the Examiner.

Please add to the U.S. PATENT DOCUMENTS on page 3 the following additional references.

-- 08/406,457 03/20/1995 Swartz, M.

09/573,381 05/19/2000 Swartz, M. ---

COMMENTS ON THE AMENDMENTS AND REMARKS

9. For the convenience of, and at the request of, the Examiner, the Amendments also appended.

In all cases of amendment, there is no new material added. The changes were only made in response to the comments of the Examiner, the wording and scope of the changes maintains the wording and scope of the original disclosure. The new claims and amendments are strictly composed of the language of the specifications and claims of the original disclosure. In each case, wording and scope of the addition maintains the wording and scope of the original disclosure.

10. Based upon the Examiner's comments the claims of record have been rewritten and amended as new claims 1-10, 12-19, 21 and 22 which fully and completely distinguish the invention over the cited references. These claims respectfully are submitted and are patentable over the cited references because:

i) the claims recite novel structure and thus are distinguished physically over every reference [Sec. 102], and

ii) said physical distinction effects new and unexpected results, thereby indicating that said physical distinction is unobvious [Sec. 103].

'765 teaches a two-stage process involving loading of hydrogen into a metal electrode such as palladium, and extraction of product using an inhomogeneous magnetic field intensity. Applicant taught using a first stage of electrode loading, followed by, a second stage of sudden rapid ("catastrophic") flow of the loaded hydrogen within the metal. Applicant taught in the original specification and claims how this apparatus works and presented objective detailed evidence of the invention. The first stage is the electrode loading, and then, in the second stage a rapid ("catastrophic") flow of hydrogen results within the metal. After the initial loading, said flow (or flux) of hydrogen takes place (pages 15-16,19-22,28,33-34; S.N.07/760,970) until the previously-loaded palladium is spent of its deuterons or the material is otherwise damaged.

Claim 4 has been amended as follows:

4. (Amended) In a process using an isotopic fuel loaded into a material, a two-stage method for controlling the loading which includes in combination:

~~supplying said isotopic fuel into said material,~~

~~providing means for loading said isotopic fuel into said material to saturate said material,~~

then providing means for producing a change in the ~~active~~ quantity of said isotopic fuel within said material,

creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

4. (Corrected) In a process using an isotopic fuel loaded into a material, a two-stage method for controlling the loading which includes in combination:

loading said isotopic fuel into said material,

then providing means for producing a change in the quantity of said isotopic fuel within said material,

creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 6 has been amended as follows:

6. (Amended) A method as in claim 4 wherein ~~second material~~ loaded isotopic fuel is a member of the group consisting of deuterium or deuterons.

6. (Corrected) A method as in claim 4 wherein loaded isotopic fuel is a member of the group consisting of deuterium or deuterons.

Claim 8 has been amended as follows:

8. (Amended) A method as in claim 4, where the said means to produce a change in the ~~active~~ quantity of said isotopic fuel within said material is by a change in temperature of said material.

Claim 12 has been amended as follows:

12. (Amended) A method as in claim 10 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.

12. (Corrected) A method as in claim 10 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.

Claim 13 has been amended as follows:

13. (Amended) An apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination:

- means to supply said isotopic fuel to said material,
- means to load said isotopic fuel into said material to saturate said material,
- means to produce a change in the active quantity of said isotopic fuel within said material,
- means thereby to produce a catastrophic diffusion flux of said isotopic fuel within said material,
- means thereby to produce said product.

13. (Corrected) An apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination:

- means to load said isotopic fuel into said material,
- means to produce a change in the quantity of said isotopic fuel within said material,
- means to produce a catastrophic diffusion flux of said isotopic fuel within said material,
- means thereby to produce said product.

Claim 19 has been amended as follows:

19. (Amended) An apparatus as in claim 13 wherein the means produce a change in the active quantity of said isotopic fuel within said material is by a change in temperature.

19. (Corrected) An apparatus as in claim 13 wherein the means produce a change in the quantity of said isotopic fuel within said material is by a change in temperature.

Claims 21 and 22 have been added as follows:

21. A method as in claim 1, where the additional step is taken of removing said product produced.

22. A method as in claim 21 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.



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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/750,765 | 12/28/2000 | Mitchell R. Swartz | | 8044 |

7590 05/17/2004
Mitchell R. Swartz, ScD, EE, MD
16 Pembroke Road
Weston, MA 02493

EXAMINER

PALABRICA, RICARDO J

ART UNIT PAPER NUMBER

3641

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 3641

Applicant's 4/23/04 response to the 3/31/04 Notice of Non-Responsive still does not properly or totally correct the deficiencies regarding the 10/28/03 Appeal Brief. No amendment to the Appeal Brief was submitted with the response.

As to item 1 in said Notice, wherein the Examiner stated that there is still no discussion in the Arguments section why each claim is separately patentable and provided specific examples of said deficiency, Applicant himself admits this is the case, as evidenced by his response: "The independent claims have been fully discussed in the Arguments section, and there is a specific of why each claim is present." Underlining provided. Applicant's response clearly confirms what the Examiner has stated in said Notice, i.e., that Applicant provides arguments only for the independent claims 1, 4 and 13, and none for the dependent claims. This deficiency in the Appeal Brief is still outstanding.

As to item 2 in said Notice on the Grouping of Claims, the deficiency cited therein has not been corrected despite the guidance cited by the Examiner (i.e., MPEP 1206) regarding the proper content of this section of the Appeal Brief.

As to item 3 in said Notice, the deficiency is still outstanding. Item 75, page 93 of the Appeal Brief, dated 1/4/04, refers to a 35 U.S.C. 112 , 2nd paragraph, rejection of claims 1, 10 and 21. As stated in said Notice, these were not the claims rejected in the 3/20/03 Final Office Action. Section 14 of said Office Action states, "Claims 1-10, 12-19, 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention.

Art Unit: 3641

As to item 4 in said Notice, this matter is resolved.

As to item 5 in said Notice, this matter is still outstanding with regard to Appendix B and the ZerAEpoint letter.

Since the above deficiencies have been listed in the 12/30/03 Office Action, and repeated in the 3/31/04 Notice, Applicant's failure to further correct them is not considered inadvertent.


Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

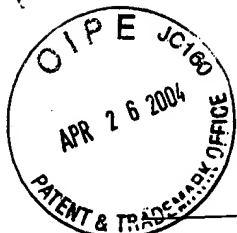
The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee.

In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in the last Office action (10/28/03).

A fully responsive reply must be timely filed to avoid abandonment of this application.

RJP
5/5/04


MICHAEL J. [unclear]
SUPERVISORY PATENT EXAMINER



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL**

This is a continuation of Serial no. 07/ 760,970

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

RECEIVED

APR 29 2004

OFFICE OF PETITIONS

April 21, 2004

DECLARATION OF DR. MITCHELL SWARTZ

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. I have a background in electrical engineering, material science, electrochemistry, and medicine, and have worked in this field for more than a decade, and have worked on experimental projects at the Massachusetts Institute of Technology, Massachusetts General Hospital and elsewhere.

2. I received the Office's notification dated March 31, 2004. (cover as Exhibit "A", attached), which is stamped and unsigned by Michael Carone and the Examiner. Said office communication purports that there are errors in the Appeal Brief dated January 4, 2004, however, analysis reveals that it is not I, but the Office, which has made a series of errors with respect to these matters.

3. The independent claims have been fully discussed in the Arguments section, and there is a specific reason why EACH independent claim is present. The citations were given in my previous Notification,

" it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101."


4. In careful detail, I demonstrated that the claims were correctly identified. The Appeal Brief says: "73..... all Claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 " below a heading of **"ARGUMENT REGARDING 35 USC §112 SECOND PARAGRAPH"**. Therefore, the questions is "Were claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph?". Exhibit "B" in the last communication was presented to show the Examiner previously wrote that "claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph" in his rejection on page 27. Therefore, as the Examiner knows, in fact, the claims were stated correctly AND that I responded, but the Examiner did not.

5. My October 22, 2002 missive to the Examiner (before Final), on pages 10 and 100, and others, made deletion of the word "active". This is shown on page 100 [Exhibit "B"] and is shown that it was discussed on page 10, in response to the Examiner's comments and requests.

6. I took the time to respond to the Examiner previously and wrote ,
"Appellant thanks the Examiner for this careful detail, but the Appellant notes that Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. Perhaps the Examiner missed this, and therefore, the Appellant has corrected this for the Examiner."

I requested to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive response. There has been none.


7. The Office's Communication inaccurately states there continue to be purported "deficiencies". The Examiner is incorrect. Any and all purported deficiencies made by the Examiner in the previous communication were addressed and corrected as was discussed in my previous Notice and the present Response.



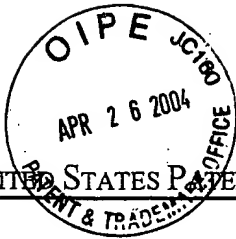
Mitchell R. Swartz, ScD, MD

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:
April 21, 2004



Mitchell R. Swartz, ScD, MD, EE
Weston, Mass. 02493



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| 09/750,765 | 12/28/2000 | Mitchell R. Swartz | | 8044 |

7590 03/31/2004

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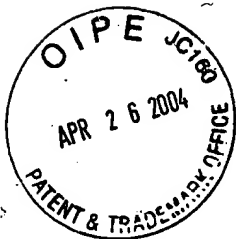
EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/31/2004

EXHIBIT "A"

Please find below and/or attached an Office communication concerning this application or proceeding.



1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: METHOD AND APPARATUS

TO CONTROL ISOTOPIC FUEL

LOADED WITHIN A MATERIAL

This is a continuation of Serial no. 07/ 760,970

Filed: 09/17/1991

PAPER: 13

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

EXHIBIT "B"

October 22, 2002

**Applicant's Response To
The Communication Of 7/22/02**

To Whom it Does Concern:

AMENDMENTS OF CLAIMS AND SPECIFICATION

In response to the Office communication dated 7/22/02 (cover as Exhibit A, attached), please amend the above-identified application as follows:

In The Specification

In response to the Office action of 7/22/02, please amend the above-identified application as follows, in response to, and to fully and completely comply with, the Examiner.

Please add to the U.S. PATENT DOCUMENTS on page 3 the following additional references.

-- 08/406,457 03/20/1995 Swartz, M.

09/573,381 05/19/2000 Swartz, M. ---

COMMENTS ON THE AMENDMENTS AND REMARKS

9. For the convenience of, and at the request of, the Examiner, the Amendments also appended.

In all cases of amendment, there is no new material added. The changes were only made in response to the comments of the Examiner, the wording and scope of the changes maintains the wording and scope of the original disclosure. The new claims and amendments are strictly composed of the language of the specifications and claims of the original disclosure. In each case, wording and scope of the addition maintains the wording and scope of the original disclosure.

10. Based upon the Examiner's comments the claims of record have been rewritten and amended as new claims 1-10, 12-19, 21 and 22 which fully and completely distinguish the invention over the cited references. These claims respectfully are submitted and are patentable over the cited references because:

i) the claims recite novel structure and thus are distinguished physically over every reference [Sec. 102], and

ii) said physical distinction effects new and unexpected results, thereby indicating that said physical distinction is unobvious [Sec. 103].

'765 teaches a two-stage process involving loading of hydrogen into a metal electrode such as palladium, and extraction of product using an inhomogeneous magnetic field intensity. Applicant taught using a first stage of electrode loading, followed by, a second stage of sudden rapid ("catastrophic") flow of the loaded hydrogen within the metal. Applicant taught in the original specification and claims how this apparatus works and presented objective detailed evidence of the invention. The first stage is the electrode loading, and then, in the second stage a rapid ("catastrophic") flow of hydrogen results within the metal. After the initial loading, said flow (or flux) of hydrogen takes place (pages 15-16,19-22,28,33-34; S.N.07/760,970) until the previously-loaded palladium is spent of its deuterons or the material is otherwise damaged.

Claim 4 has been amended as follows:

4. (Amended) In a process using an isotopic fuel loaded into a material, a two-stage method for controlling the loading which includes in combination:

~~supplying said isotopic fuel into said material,~~

~~providing means for loading said isotopic fuel into said material to saturate said material,~~

then providing means for producing a change in the ~~active~~ quantity of said isotopic fuel within said material,

creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

4. (Corrected) In a process using an isotopic fuel loaded into a material, a two-stage method for controlling the loading which includes in combination:

loading said isotopic fuel into said material,

then providing means for producing a change in the quantity of said isotopic fuel within said material,

creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 6 has been amended as follows:

6. (Amended) A method as in claim 4 wherein ~~second material~~ loaded isotopic fuel is a member of the group consisting of deuterium or deuterons.

6. (Corrected) A method as in claim 4 wherein loaded isotopic fuel is a member of the group consisting of deuterium or deuterons.

Claim 8 has been amended as follows:

8. (Amended) A method as in claim 4, where the said means to produce a change in the ~~active~~ quantity of said isotopic fuel within said material is by a change in temperature of said material.

Claim 12 has been amended as follows:

12. (Amended) A method as in claim 10 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.

12. (Corrected) A method as in claim 10 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.

Claim 13 has been amended as follows:

13. (Amended) An apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination:

- means to supply said isotopic fuel to said material,
- means to load said isotopic fuel into said material to saturate said material,
- means to produce a change in the active quantity of said isotopic fuel within said material,
- means thereby to produce a catastrophic diffusion flux of said isotopic fuel within said material,
- means thereby to produce said product.

13. (Corrected) An apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination:

- means to load said isotopic fuel into said material,
- means to produce a change in the quantity of said isotopic fuel within said material,
- means to produce a catastrophic diffusion flux of said isotopic fuel within said material,
- means thereby to produce said product.

Claim 19 has been amended as follows:

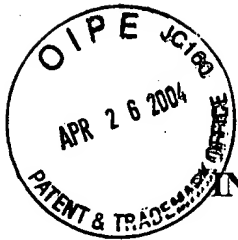
19. (Amended) An apparatus as in claim 13 wherein the means produce a change in the active quantity of said isotopic fuel within said material is by a change in temperature.

19. (Corrected) An apparatus as in claim 13 wherein the means produce a change in the quantity of said isotopic fuel within said material is by a change in temperature.

Claims 21 and 22 have been added as follows:

21. A method as in claim 1, where the additional step is taken of removing said product produced.

22. A method as in claim 21 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL**

This is a continuation of Serial no. 07/ 760,970

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

April 21, 2004

DECLARATION OF GAYLE VERNER

I, Gayle Verner, wish to make the following statement:

1. I am a citizen of the United States of America and resident of the Commonwealth of Massachusetts. My field of experience is that of a journalist, educator, and a science writer. I am nationally published in a number of technical publications and many mainstream magazines and journals, as well as having written extensively on many subjects.

2. I have reviewed the above-entitled application in general, and the relevant papers and Exhibits in particular, including the Office's communication dated March 31, 2004. (cover as Exhibit "A", attached), which is stamped and unsigned by Michael Carone and typed by the Examiner. Said office communication alleges that there are errors in the Appeal Brief dated January 4, 2004. It appears that it is the Office which has made a series of errors with respect to these matters.

3. The independent claims have been fully discussed in the Arguments section, and there is a specific reason why EACH independent claim is present. The citations were given in Appellant's previous Notification,

" it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101."

4. In careful detail, Appellant demonstrated that the claims were correctly identified. The Appeal Brief says: "73..... all Claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 " below a heading of "**ARGUMENT REGARDING 35 USC §112 SECOND PARAGRAPH**". Therefore, the questions is "Were claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph?". Exhibit "B" in the last communication did show that the Examiner previously wrote that "claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph" in his rejection on page 27.

5. Appellant's October 22, 2002 response to the Examiner made deletion of the word "active"

6. Appellant responded to the Examiner previously and wrote ,

"Appellant thanks the Examiner for this careful detail, but the Appellant notes that Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. Perhaps the Examiner missed this, and therefore, the Appellant has corrected this for the Examiner."


Gayle Verner

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 21, 2004


Gayle Verner

P.O. Box 81135

Wellesley Hills, Massachusetts 02481-0001



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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/750,765 | 12/28/2000 | Mitchell R. Swartz | | 8044 |

7590 03/31/2004

Mitchell R. Swartz, ScD, EE, MD
16 Pembroke Road
Weston, MA 02493

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/31/2004

EXHIBIT "A"

Please find below and/or attached an Office communication concerning this application or proceeding.



1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL

This is a continuation of Serial no. 07/ 760,970

Filed: 09/17/1991

PAPER: 13

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

EXHIBIT "B"

October 22, 2002

**Applicant's Response To
The Communication Of 7/22/02**

To Whom it Does Concern:

AMENDMENTS OF CLAIMS AND SPECIFICATION

In response to the Office communication dated 7/22/02 (cover as Exhibit A, attached), please amend the above-identified application as follows:

In The Specification

In response to the Office action of 7/22/02, please amend the above-identified application as follows, in response to, and to fully and completely comply with, the Examiner.

Please add to the U.S. PATENT DOCUMENTS on page 3 the following additional references.

-- 08/406,457 03/20/1995 Swartz, M.

09/573,381 05/19/2000 Swartz, M. ---

COMMENTS ON THE AMENDMENTS AND REMARKS

9. For the convenience of, and at the request of, the Examiner, the Amendments also appended.

In all cases of amendment, there is no new material added. The changes were only made in response to the comments of the Examiner, the wording and scope of the changes maintains the wording and scope of the original disclosure. The new claims and amendments are strictly composed of the language of the specifications and claims of the original disclosure. In each case, wording and scope of the addition maintains the wording and scope of the original disclosure.

10. Based upon the Examiner's comments the claims of record have been rewritten and amended as new claims 1-10, 12-19, 21 and 22 which fully and completely distinguish the invention over the cited references. These claims respectfully are submitted and are patentable over the cited references because:

i) the claims recite novel structure and thus are distinguished physically over every reference [Sec. 102], and

ii) said physical distinction effects new and unexpected results, thereby indicating that said physical distinction is unobvious [Sec. 103].

'765 teaches a two-stage process involving loading of hydrogen into a metal electrode such as palladium, and extraction of product using an inhomogeneous magnetic field intensity. Applicant taught using a first stage of electrode loading, followed by, a second stage of sudden rapid ("catastrophic") flow of the loaded hydrogen within the metal. Applicant taught in the original specification and claims how this apparatus works and presented objective detailed evidence of the invention. The first stage is the electrode loading, and then, in the second stage a rapid ("catastrophic") flow of hydrogen results within the metal. After the initial loading, said flow (or flux) of hydrogen takes place (pages 15-16,19-22,28,33-34; S.N.07/760,970) until the previously-loaded palladium is spent of its deuterons or the material is otherwise damaged.

Claim 4 has been amended as follows:

4. (Amended) In a process using an isotopic fuel loaded into a material, a two-stage method for controlling the loading which includes in combination:

~~supplying said isotopic fuel into said material,~~

~~providing means for loading said isotopic fuel into said material to saturate said material,~~

then providing means for producing a change in the ~~active~~ quantity of said isotopic fuel within said material,

creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

4. (Corrected) In a process using an isotopic fuel loaded into a material, a two-stage method for controlling the loading which includes in combination:

loading said isotopic fuel into said material,

then providing means for producing a change in the quantity of said isotopic fuel within said material,

creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 6 has been amended as follows:

6. (Amended) A method as in claim 4 wherein ~~second material~~ loaded isotopic fuel is a member of the group consisting of deuterium or deuterons.

6. (Corrected) A method as in claim 4 wherein loaded isotopic fuel is a member of the group consisting of deuterium or deuterons.

Claim 8 has been amended as follows:

8. (Amended) A method as in claim 4, where the said means to produce a change in the ~~active~~ quantity of said isotopic fuel within said material is by a change in temperature of said material.

Claim 12 has been amended as follows:

12. (Amended) A method as in claim 10 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.

12. (Corrected) A method as in claim 10 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.

Claim 13 has been amended as follows:

13. (Amended) An apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination:

means to supply said isotopic fuel to said material,

means to load said isotopic fuel into said material to saturate said material,

means to produce a change in the active quantity of said isotopic fuel within said material,

means thereby to produce a catastrophic diffusion flux of said isotopic fuel within said material,

means thereby to produce said product.

13. (Corrected) An apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination:

means to load said isotopic fuel into said material,

means to produce a change in the quantity of said isotopic fuel within said material,

means to produce a catastrophic diffusion flux of said isotopic fuel within said material,

means thereby to produce said product.

Claim 19 has been amended as follows:

19. (Amended) An apparatus as in claim 13 wherein the means produce a change in the active quantity of said isotopic fuel within said material is by a change in temperature.

19. (Corrected) An apparatus as in claim 13 wherein the means produce a change in the quantity of said isotopic fuel within said material is by a change in temperature.

Claims 21 and 22 have been added as follows:

21. A method as in claim 1, where the additional step is taken of removing said product produced.

22. A method as in claim 21 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.



RESP. UNDER 37 CFR 1.116
EXPE D. PROC.

RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL**

This is a continuation of Serial no. 07/ 760,970

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

RECEIVED
MAY 06 2004
GROUP 3600

April 21, 2004

Office of the Clerk

c/o The Commissioner for Patents
Alexandria, VA 22313-1450

MOTION FOR SANCTIONS AGAINST MR. PALABRICA
pursuant to 37 C.F.R. 1.181

1. This Motion is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct the situation with respect to the OFFICE Communication [Exhibit "A" attached, below]. Pursuant to 37 C.F.R. 1.181, there is no fee. This Motion is reasonable, based upon the reasons stated below, and confirmed by two (2) Declarations supporting this Motion.

2. This Motion is reasonable, based upon the reasons stated below and confirmed by the facts as discussed in the two (2) Declarations supporting this Petition. Said Office notification regarding the Appeal Brief is dated March 31, 2004. This Motion will demonstrate that all matters cited by the Office have already been addressed in the now-submitted revised Appeal Brief, and that said matters were already addressed in the Appellant's previously submitted "Notice of Compliance". In the discussion below, reference is made to the Declaration of Dr. Mitchell Swartz (hereinafter called the

"Swartz Declaration") dated April 21, 2004. It will be demonstrated that this Motion is reasonable because of the Office's failure to be accurate and follow a uniform standard of review. In the discussion below, reference is made to the Declaration of Gayle Verner (hereinafter called the "Verner Declaration") dated April 21, 2004. It will be demonstrated that this Petition is reasonable.

The Office's First False Statement

3. The Office's Communication inaccurately states,

"1. Claims 1-10, 12-19, 21 and 22 have been rejected. Applicant states in the Grouping of Claims Section that the "appealed claims do not stand or fall together." However, there is still' no discussion in the Arguments section of why EACH claim is considered separately patentable. For example:"

THE TRUTH - The Appellant Responded

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific reason why EACH independent claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. The Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"10. ... there is discussion in the Arguments section it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition is was discussed on page 21.

Second Appellant respectfully disputes this because there is discussion in the Arguments section of why EACH claim is considered separately patentable.

Third, as Appellant stated,

"Claim 1 distinguishes and limits the invention, in a process for producing a product using a material which is electrochemically loaded with an isotopic fuel, to a method of controlling the loading which includes in combination, loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material, providing a diffusion barrier to said diffusion flux of said isotopic fuel within said material, and thereby producing said product."

Claim 4 distinguishes and limits the invention, in a process using an isotopic fuel loaded into a material, to a two-stage method for controlling the loading which includes in combination loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 13 distinguishes and further limits the invention to an apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination means to load said isotopic fuel into said material, means to produce a change in the quantity of said isotopic fuel within said material, means to produce a catastrophic diffusion flux of said isotopic fuel within said material, means thereby to produce said product."

Fourth, judiciary economy is important, and Appellant did not want to repeat each portion discussed on page 21 an additional four times. However, to please the Examiner and the Office, the Appellant has corrected this, as requested."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did he discuss Applicant's arguments. Nor did he rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"10. ... there is discussion in the Arguments section it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition is was discussed on page 21."

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than his desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review. The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

Fifth, there is no basis for the examiner's demand. Historically, this case and docket is such that the present above-entitled invention is a continuation of the previous application, which was before the Board of patent appeal and before the federal court. In that docket (S.N. ' 970) of which the present above entitled application is a continuation, neither the Board nor court had any problem. Instead the Examiner has created bogus issues and fabricated new demands to obstruct the appellant from presenting his appeal brief to the Board of patent Appeal.

Sixth, the Examiner's new demands have no basis in authority or law or precedent on a general basis. The appellant has previously responded, and it is the examiner who has failed to respond in his unsigned communication which ignores the appellants submitted (and received) notification of compliance and new appeal brief (in triplicate).

Seventh, the Examiners new demands are inconsistent with the normal standards of review. The standard of review in this Case includes the fact that the examiner suddenly demands that the appellant write separate responses for each of the dependent claims whereas the law requires and the standards of review consists of appellants who deal with the independent claims. This is demonstrated by precedent.

Eighth, the examiners new demands are unnecessary, and clearly have been made only to obstruct justice and deny the Board access to an Appeal.

The Office's Second False Statement

4. The Office's Communication inaccurately states,

"a. As to the rejections under 35 U.S.C. 112, 1st paragraph, Applicant provides arguments only for claims 1, 4 and 13. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 21 of the Appeal Brief)."

THE TRUTH - The Appellant Responded

The Examiner is incorrect for several reasons. First, the Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong ... it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph)."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"(This) is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph)"

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

Second, there is no basis for the examiner's demand. Historically, this case and docket is such that the present above-entitled invention is a continuation of the previous application, which was before the Board of patent appeal and before the federal court. In that docket (S.N. ' 970) of which the present above entitled application is a continuation, neither the Board nor court had any problem. Instead the Examiner has created bogus issues and fabricated new demands to obstruct the appellant from presenting his appeal brief to the Board of patent Appeal.

Third, the Examiner's new demands have no basis in authority or law or precedent on a general basis. The appellant has previously responded, and it is the examiner who has failed to respond in his unsigned communication which ignores the appellants submitted (and received) notification of compliance and new appeal brief's.

Fourth the examiners new demands are inconsistent with the normal standards of review. The standard of review in this Case includes the fact that the examiner suddenly demands that the appellant write out separate responses for each of the dependent claims whereas the law requires and the standards of review consist of, appellants having only to deal with the independent claims.

Fifth, the Examiner castigates the Appellant for repeating things, but is attempting to trick to Appellant into stating almost the same thing over and over.

Sixth, the examiners new demands are unnecessary and made only to obstruct justice. The examiner continues to be unreasonable, inaccurate, and apparently not on the same page as either the security of United States or the empowerment of United States citizens secondary to article 1 section 8.

The Office's Third False Statement

5. The Office's Communication inaccurately states,

"b. As to the rejections under 35 U.S.C. 112, 2nd paragraph, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 92 of the Appeal Brief)."

THE TRUTH - The Appellant Responded

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong ... it is explicitly discussed ... on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph)"
["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Office is wrong ... it is explicitly discussed ... on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph)"

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

The Office's Fourth False Statement

6. The Office's Communication inaccurately states,
"c. As to the rejections under 35 U.S.C. 102, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 100 of the Appeal Brief)"

THE TRUTH - The Appellant responded

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong ... it is explicitly discussed ... on page 99 of the Argument section for 35 U.S.C. 102"
["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Office is wrong ... it is explicitly discussed ... on page 99 of the Argument section for 35 U.S.C. 102"

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

The Office's Fifth False Statement

7. The Office's Communication inaccurately states,

"d. As to the rejections under 35 U.S.C. 101, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 131 of the Appeal Brief)."

The Examiner is disingenuous about the Appeal Brief. The independent claims have been fully discussed in the Arguments section, and there is a specific of why EACH claim is present. The Examiner knows this. The citations were given in Appellant's previous Notification explicitly. Instead of honesty, the Examiner is disingenuous and elects to be unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Notice or Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office is wrong it is explicitly discussed on page 127 of the Argument section for 35 U.S.C. 101."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. The Examiner did not cite Applicant's arguments presented in detail. Nor did the Examiner discuss Applicant's arguments. Nor did the Examiner rebut Applicant's arguments. Therefore it is absolutely impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people.

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"The Office is wrong it is explicitly discussed on page 127 of the Argument section for 35 U.S.C. 101."

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response -- other than Mr. Palabrica's desire to deny an American the protection afforded by the US Constitution, by the laws passed by the US Congress, and which are inherent to the applicant involving both right to due process and consistent standard of review.

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant.

The Office's Sixth False Statement

8. The Office's Communication inaccurately states,

"2. The Grouping of Claims section is improper because it includes arguments as to why claims 1, 4 and 13 distinguish and limit the invention. As stated in the 12/3/03 Office Action, these arguments should be in the Arguments section. See MPEP 1206, 'Appeal Brief', for guidance on the content for this section."

THE TRUTH - The Appellant Responded

The Appellant has followed and the arguments are in the Arguments section. This was discussed in the previous (ignored) Notice to the Examiner. The Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"10. ... there is discussion in the Arguments section it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition is was discussed on page 21."

The Applicant is disappointed that expense, effort, diligence are ignored in submitted documents which were received by the Examiner - but ignored with an unfounded, improper, and egregious attack on the Appellant even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner.

The Office's Seventh False Statement

9. The Office's Communication inaccurately states,

"3. Contrary to the allegation on page 9 of "Notice of Compliance by Appellant," applicant has not corrected the error cited in Section f, item d) of the 12/30/03 Office Action (see item 75, page 93 of the Appeal Brief).

"The claims referred to by the Applicant in said item 75 are still incorrect because they are not the claims rejected by the Examiner in the 3/20/03 Final Office Action. Therefore, the arguments presented by the Applicant in this section of the Appeal Brief are non-responsive to the claim rejections because they address the wrong claims."

THE TRUTH - The Appellant Responded

The Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. The Appellant in careful detail demonstrated that the claims were correctly identified. The Appeal Brief says: "73..... all Claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 " below a heading of "**ARGUMENT REGARDING 35 USC §112 SECOND PARAGRAPH**". Therefore, the question is "Were claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph?". Exhibit "B" was presented to show the Examiner that he previously wrote that "claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph" in his rejection on page 27. Therefore, as the Examiner knows, in fact, the claims were stated correctly AND that the Appellant responded, but the Examiner did not. Therefore, the Appellant complied and was responsive.

The Office's Eighth False Statement

10. The Office's Communication states,

"4. Contrary to the allegation on page 10 of "Notice of Compliance by Appellant," applicant has not corrected Appendix A. Claim 19, as recited, still does not include the term "active" before "quantity"."

THE TRUTH - The Appellant Responded

The Examiner is again directed to the record.

In Applicant's October 22, 2002 missive to the Examiner (before Final), on pages 10 and 100 the deletion of the word "active" without prejudice was made and noted. This is shown on pages 100 [Exhibit "B"] and shown is it was discussed on page 10, among others, in response to the Examiner's comments and requests.

Once again, it appears that the Examiner wants to be able to attack the Applicant (now Appellant), ignore the record, ignore the science, and hope the Office will condone continued obstruction of justice. Exhibit "B" demonstrates that the word active in claim 19 was deleted and the Examiner is without foundation, as he has been without response to Applicant's comments (*vide supra, vide infra*).

The Office's Ninth False Statement

11. The Office's Communication purports,

"5. The purpose of Appendix B is still unclear, e.g., the ZeraEpoint letter."

THE TRUTH - The Appellant Responded

Once again, the Examiner has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communication from the Applicant to the Examiner. For example, in said Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"17. The Examiner states,

"The purpose of Appendix B is unclear. Applicant should either properly relate this Appendix to his arguments or delete it."

THE TRUTH - Appendix B Was Quoted In The Text In Two Place

Appellant thanks the Examiner for this careful detail, but the Appellant notes that Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. Perhaps the Examiner missed this, and therefore, the Appellant has corrected this for the Examiner."

["Appellant's Notice to the Board", dated 1/4/04]

Attention is now directed to the fact that said comments in Applicant's Communication have simply been ignored by the Examiner. May the Court and Board note that once again, the Examiner did not cite Applicant's arguments, nor did the Examiner discuss Applicant's arguments, nor did the Examiner rebut Applicant's arguments. Therefore it is impossible to tell how the Examiner weighed Applicant's arguments. Because the Examiner was requested to answer and respond with specificity, the Examiner has apparently ignored the Office rules, and expectations of reasonable people.

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

"Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. "

Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response.

The Office's Tenth False Statement

12. The Office's Communication inaccurately states,

"Since the above deficiencies have been listed in the 12/30/03 Office Action, Applicant's failure to correct them is no longer considered inadvertent."

THE TRUTH - The Appellant Responded

This statement by the Examiner is disingenuous. The above deficiencies were not listed in the 12/30/03 Office Action. Furthermore, any and all purported deficiencies made by the Examiner in the previous communication were addressed and corrected. In fact, the Appellant was totally compliant before, and is totally compliant now (as will be discussed below). Attention of the Court and Board is directed to the simple fact that all matters were both resolved and discussed by the Appellant. Unfortunately, said previous response by the Appellant was once again simply ignored by the Examiner, leading to the disingenuous sentence cited above.

For example, first, the Office's previous notification stated, "*a. The statement of the Status of Claims is inconsistent with Appendix A (Claims Involved in the Appeal). Claims 11 and 20 are not listed in the Status Of Claims but they are listed in Appendix A.*" Appellant corrected this misprint in Appendix A. **Therefore, the Appellant complied and was responsive.**

Second, the Office's previous notification stated, "*b. The statement of Status of Amendments is confusing because it appears to refer to the original claim 5, instead of an amended claim 5*". Appellant disputed the Examiner that this is confusing. Nonetheless, Appellant complied and corrected this by adding the word "amended" exactly where the Examiner demanded. **Therefore, the Appellant complied and was responsive.**

Third, the Office's previous notification stated, "*c. The Summary of Invention is improper because it includes subject matter not found in the disclosure (e.g. see page 4, 2nd paragraph which is not recited in the Abstract).*" The Examiner was mistaken because these lines are in the original disclosure of the above-entitled application on page 3, lines 1 through 4. Nonetheless to comply with the Examiner, the offending paragraph is now deleted. **Therefore, the Appellant complied and was responsive.**

Fourth, the Office's previous notification stated, *"d. The recitation and scope of Issues is improper because it does not conform to MPEP 1206. For example, applicant does not specify the basis of the alleged unpatentability of the claims. An example of a proper way of phrasing an issue is as follows: 'Whether claims 1-20 are unpatentable under 35 U.S.C. 112, first paragraph, based on a nonenabling disclosure.'* The Examiner was wrong for eight (8) reasons, listed and discussed in detail (but ignored by the Examiner). In addition, the Appellant conformed with the Examiner's suggestions and rewrote the Issues. **Therefore, the Appellant complied and was responsive.**

Fifth, the Office's previous notification stated, *"Other examples of impropriety include: a) associating operability of the claimed invention with 35 U.S.C. 112 1st and 2nd paragraphs issues".* The Examiner was wrong for nine reasons, listed and discussed in detail (but ignored by the Examiner). In addition, there is no mention of operability of the claimed invention in the argument paragraphs of the 35 U.S.C. 112 2nd paragraphs issues. Appellant respectfully disputed this because utility and USC 101 are not discussed on page 22 of the Appeal Brief, except through enablement. **Therefore, the Appellant complied and was responsive.**

Sixth, The Office's previous notification stated, *"b) improperly including terms not relevant to the grounds of rejection used by the examiner, e.g., 1.192q6)(v)' statements on 'disingenuous claim by the Office' etc.."* The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). So as to fully comply with the Examiner, the Appellant corrected this and removed the Issues which offended the Office about the "United States Constitution", despite Appellant's civil rights thus clearly violated. **Therefore, the Appellant complied and was responsive.**

Seventh, the Office's previous notification stated, *"e. The statement on Grouping of Claims is improper because it includes arguments as to why claims 1, 4 and 5 (sic) distinguish and limit the invention. These arguments should be in the Argument section".* The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). The independent claims discussed in the Grouping of Claims is not "claims 1, 4 and 5" as the Examiner purports, but Claims 1, 4 and 13. As Appellant stated, as follows in the Appeal Brief,

"Claim 1 distinguishes and limits the invention, in a process for producing a product using a material which is electrochemically loaded with an isotopic fuel, to a method of controlling the loading which includes in combination, loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said

material, providing a diffusion barrier to said diffusion flux of said isotopic fuel within said material, and thereby producing said product.

Claim 4 distinguishes and limits the invention, in a process using an isotopic fuel loaded into a material, to a two-stage method for controlling the loading which includes in combination loading said isotopic fuel into said material, then providing means for producing a change in the quantity of said isotopic fuel within said material, creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 13 distinguishes and further limits the invention to an apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination means to load said isotopic fuel into said material, means to produce a change in the quantity of said isotopic fuel within said material, means to produce a catastrophic diffusion flux of said isotopic fuel within said material, means thereby to produce said product."

Therefore, the Appellant complied and was responsive.

Eighth, the Office's previous notification stated, "The Grouping of Claims section states that *"the appealed claims do not stand or fall together."* However there is no discussion in the Arguments section as to why EACH claim is considered separately patentable." The Examiner was wrong for six reasons, listed and discussed in detail (but ignored by the Examiner). Despite the disingenuous statement of the Examiner, it is explicitly discussed on page 22 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 92 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 99 of the Argument section for 35 U.S.C. 102, and then on page 127 of the Argument section for 35 U.S.C. 101. In addition it was discussed on page 21. In addition, to please the Examiner and the Office, the Appellant corrected this, as requested, yet again. Therefore, the Appellant complied and was responsive. Why does the Examiner NEVER have to respond?

Ninth, the Office's previous notification stated, "*f. Applicant's contentions in the Arguments section are improper. Examples of impropriety include: a) issues of operability and utility are improperly associated in arguments regarding the 35 U.S.C. 112, 1st paragraph rejection (see page 22 of the Brief)*". The Examiner was wrong for seven reasons, listed and discussed in detail (but ignored by the Examiner). First, utility and USC 101 are not discussed on page 22 of the Appeal Brief. Second, for ten years the Office has cited "operability" pursuant to 35 U.S.C. 112, first paragraph issues. All of a sudden, the Office's previous arguments that were reasonably consistent over more than a decade in this matter, apparently were changed suddenly without any clear substantive explanation, authority, exhibit, or basis for the paroxysmal change - despite repeated requests. Therefore, the Appellant complied and was responsive.

Tenth, the Office's previous notification stated, "*c) claims rejected under 35 U.S.C. 112, 2nd paragraph are not correctly identified (e.g., see item 75, page 92)*". The Appellant in careful detail demonstrated that the claims were correctly identified. The Appeal Brief says: "73..... all Claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 " below a heading of **"ARGUMENT REGARDING 35 USC §112 SECOND PARAGRAPH"**. Therefore, the questions is "Were claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph?". Exhibit "B" was presented to show the Examiner the he previously wrote that "claims 1-10, 12-19, 21, and 22 rejected under 35 U.S.C. 112 second paragraph" in his rejection on page 27. Therefore, as the Examiner knows, in fact, the claims were stated correctly AND that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Eleventh, the Office's previous notification stated, "*b) arguments regarding 35 U.S.C. 112, 2nd paragraph, improperly discusses 35 U.S.C. 102(b) rejection of claims (e.g. see page: 92)*". The Appellant in careful detail demonstrated that the Examiner was incorrect. The Board and Examiner were directed to the fact that the record demonstrates that the Appellant had appealed on the Issue of "definiteness". Therefore, the Appellant is entitled to bring up an argument regarding the rejection of Claims 1-10, 12-19, 21 and 22 under 35 U.S.C. 112 second paragraph which states, -- as Appellant notes to the Board -- "... there has to have been definiteness with respect to the present invention because it is a Continuation and because the Examiner could not have made the previous rejections under 35 U.S.C. 102 had the invention truly been without definiteness." The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Twelfth, the Office's previous notification stated, "*d) claims rejected as being anticipated by Kinsella under 35 U.S.C. 102(b) are not correctly identified (e.g., see item 95, page 110)*". The Appellant has corrected this and noted,

Appellant suggests that the Examiner has said this "tongue-in-cheek" and to put the Appellant through another "hoop" because although the Applicant did make a misprint here and used "Claims 1, 2, 4, 5, 7, 10, 13, 15 and 16 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Kinsella (U.S. 3,682, 806)" instead of "Claims 1, 2, 4, 5, 7, 10, 13, 15 and 16 and 21 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Kinsella (U.S. 3,682, 806)". However, as the Examiner knows, in fact, in the important summary page on 141 of the Appeal Brief, the Appellant stated this correctly.

This demand of the Examiner is inconsistent with the U.S. Supreme Court, which has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Thirteenth, the Office's previous notification stated, "*claims that have not been rejected, such as claims 11 and 20, are improperly included in the list.*" Appellant corrected this misprint. **Therefore, the Appellant complied and was responsive.**

Fourteen, the Office's previous notification stated, "*The purpose of Appendix B is unclear. Applicant should either properly relate this Appendix to his arguments or delete it.*" Appellant noted that Dr. Mallove's quotes from Appendix B were cited in context on pages 28 through 29 and 129 through 130 in the Appeal Brief. The Examiner missed this. In addition, the Appellant corrected this for the Examiner. The Examiner knows that the Appellant responded, but the Examiner did not. **Therefore, the Appellant complied and was responsive.**

Here then are fourteen (14) ways Appellant responded and/or complied. And to these 14 changes and/or responses, the Examiner has done nothing except to disingenuously pretend that there has been no response. Instead of allowing the Board in its own wisdom to resolve the important matter involving the Applicant's invention and civil rights, and now involving US security, the Examiner --fully aware that the Appellant responded-- with tongue deep-in-cheek pretends that Appellant did not. However, the record, the previous Notification, and this present Response with the accompanying Declarations, do palpably affirm otherwise. **The Appellant complied and was responsive.**

Given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, and authority which allows the Examiner to dismiss the Appellant's previous fourteen responses without a single citation, or substantive coherent response.

SUMMARY

13. Appellant has already fixed the errors which the Office has noted previously. The Office's communication dated March 31, 2004 [Exhibit "A"], appears to itself have at least eleven serious errors. Said error results because the Office has ignored the Applicant's communications of October 22, 2002 [Exhibit "B"], and the Notice and Appeal submitted to the Office (and received) January 4, 2004.

14. Appellant notes that the U.S. Supreme Court, which has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

15. The Office's communication dated March 31, 2004 (Exhibit "A"), which has at least eleven serious errors must now be examined in the light of, previously, forty three (43) errors in other recent Office Communications used by the Examiner to delay both justice and delivery of Appeal Briefs to the Board. Considering only the eleven errors and misguided demands here, if there was a fifty percent likelihood of each error (that is, if it were made innocently), then with the forty three (43) previous cumulative errors by the Examiner in the last several months since the remand from the Board reveal that there is now less than one chance in a billion billion likelihood [1 in $\sim 1.8 \times 10^{16}$] that the Examiner is innocent regarding these errors.

WHEREFORE for the above reasons, the Applicant (now Appellant) respectfully requests the Office allow this Motion for Sanctions, and begin an internal inquiry into why Mr. Palabrica has been encouraged to give systematic false statements in Federal documents. This should include why he does this for inventions associated with US security as he demands Argument relating to the US Constitution (from where his job derives) be deleted. This is serious matter, and the Office has not shown a shred of accountability as it assaults the US Constitution, civil rights, US citizens, and its own integrity.

Respectfully submitted,



Mitchell R. Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

Certificate Of Mailing [37 CFR 1.8(a)]


April 21, 2004

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to
"Office of the Clerk
Board Of Patent Appeals
c/o The Commissioner for Patents
Alexandria, VA 22313-1450" on the date below.

Thank you.

Sincerely,
April 21, 2004


M.R. Swartz



UNITED STATES PATENT AND TRADEMARK OFFICE

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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/750,765 | 12/28/2000 | Mitchell R. Swartz | | 8044 |

7590 03/31/2004

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16 Pembroke Road
Weston, MA 02493

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/31/2004

EXHIBIT "A"

Please find below and/or attached an Office communication concerning this application or proceeding.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL

This is a continuation of Serial no. 07/ 760,970

Filed: 09/17/1991

PAPER: 13

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

EXHIBIT "B"

October 22, 2002

**Applicant's Response To
The Communication Of 7/22/02**

To Whom it Does Concern:

AMENDMENTS OF CLAIMS AND SPECIFICATION

In response to the Office communication dated 7/22/02 (cover as Exhibit A, attached), please amend the above-identified application as follows:

In The Specification

In response to the Office action of 7/22/02, please amend the above-identified application as follows, in response to, and to fully and completely comply with, the Examiner.

Please add to the U.S. PATENT DOCUMENTS on page 3 the following additional references.

-- 08/406,457 03/20/1995 Swartz, M.

09/573,381 05/19/2000 Swartz, M. ---

COMMENTS ON THE AMENDMENTS AND REMARKS

9. For the convenience of, and at the request of, the Examiner, the Amendments also appended.

In all cases of amendment, there is no new material added. The changes were only made in response to the comments of the Examiner, the wording and scope of the changes maintains the wording and scope of the original disclosure. The new claims and amendments are strictly composed of the language of the specifications and claims of the original disclosure. In each case, wording and scope of the addition maintains the wording and scope of the original disclosure.

10. Based upon the Examiner's comments the claims of record have been rewritten and amended as new claims 1-10, 12-19, 21 and 22 which fully and completely distinguish the invention over the cited references. These claims respectfully are submitted and are patentable over the cited references because:

i) the claims recite novel structure and thus are distinguished physically over every reference [Sec. 102], and

ii) said physical distinction effects new and unexpected results, thereby indicating that said physical distinction is unobvious [Sec. 103].

'765 teaches a two-stage process involving loading of hydrogen into a metal electrode such as palladium, and extraction of product using an inhomogeneous magnetic field intensity. Applicant taught using a first stage of electrode loading, followed by, a second stage of sudden rapid ("catastrophic") flow of the loaded hydrogen within the metal. Applicant taught in the original specification and claims how this apparatus works and presented objective detailed evidence of the invention. The first stage is the electrode loading, and then, in the second stage a rapid ("catastrophic") flow of hydrogen results within the metal. After the initial loading, said flow (or flux) of hydrogen takes place (pages 15-16,19-22,28,33-34; S.N.07/760,970) until the previously-loaded palladium is spent of its deuterons or the material is otherwise damaged.

Claim 4 has been amended as follows:

4. (Amended) In a process using an isotopic fuel loaded into a material, a two-stage method for controlling the loading which includes in combination:

~~supplying said isotopic fuel into said material,~~

~~providing means for loading said isotopic fuel into said material to saturate said material,~~

then providing means for producing a change in the ~~active~~ quantity of said isotopic fuel within said material,

creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

4. (Corrected) In a process using an isotopic fuel loaded into a material, a two-stage method for controlling the loading which includes in combination:

loading said isotopic fuel into said material,

then providing means for producing a change in the quantity of said isotopic fuel within said material,

creating thereby a catastrophic diffusion flux of said isotopic fuel within said material.

Claim 6 has been amended as follows:

6. (Amended) A method as in claim 4 wherein second material loaded isotopic fuel is a member of the group consisting of deuterium or deuterons.

6. (Corrected) A method as in claim 4 wherein loaded isotopic fuel is a member of the group consisting of deuterium or deuterons.

Claim 8 has been amended as follows:

8. (Amended) A method as in claim 4, where the said means to produce a change in the ~~active~~ quantity of said isotopic fuel within said material is by a change in temperature of said material.

Claim 12 has been amended as follows:

12. (Amended) A method as in claim 10 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.

12. (Corrected) A method as in claim 10 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.

Claim 13 has been amended as follows:

13. (Amended) An apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination:

means to supply said isotopic fuel to said material,

means to load said isotopic fuel into said material to saturate said material,

means to produce a change in the active quantity of said isotopic fuel within said material,

means thereby to produce a catastrophic diffusion flux of said isotopic fuel within said material,

means thereby to produce said product.

13. (Corrected) An apparatus to produce a product using a material loaded with an isotopic fuel, which includes in combination:

means to load said isotopic fuel into said material,

means to produce a change in the quantity of said isotopic fuel within said material,

means to produce a catastrophic diffusion flux of said isotopic fuel within said material,

means thereby to produce said product.

Claim 19 has been amended as follows:

19. (Amended) An apparatus as in claim 13 wherein the means produce a change in the active quantity of said isotopic fuel within said material is by a change in temperature.

19. (Corrected) An apparatus as in claim 13 wherein the means produce a change in the quantity of said isotopic fuel within said material is by a change in temperature.

Claims 21 and 22 have been added as follows:

21. A method as in claim 1, where the additional step is taken of removing said product produced.

22. A method as in claim 21 wherein said means of removing said product utilizes an applied spatially inhomogeneous magnetic field.